UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JANET MILLER Plaintiff, vs. COMMONWEALTH FINANCIAL SYSTEMS, INC. d/b/a NCC, INC. Defendant,	)))))))))))	Civil Action No. 4:11-cv-00269

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

JANET MILLER, ("Plaintiff"), through the undersigned counsel, Dave Lilley, alleges the following against. COMMONWEALTH FINANCIAL SYSTEMS, INC. d/b/a NCC, INC., Defendant"):

INTRODUCTION

1. This is an action for actual and statutory damages brought by Plaintiff JANET MILLER an individual consumer, against defendant COMMONWEALTH FINANCIAL SYSTEMS, INC. d/b/a NCC, INC., for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter ''FDCPA'') and the Texas Debt Collection Practices Act, § 392 *et seq.* (hereinafter "TDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this

District is proper in that the Defendant transacts business here and the conduct complained of occurred here.

PARTIES

3. Plaintiff, Janet Miller is a natural person residing in the state of Shady Shores, Denton County, Texas.

4. Commonwealth Financial Systems, Inc. d/b/a NCC, Inc. is a corporation engaged in the business of collecting debt in this state with its principal place of business located at 245 Main Street, Dickson City, Pennsylvania 18519. The principal purpose of Defendant is the collection of debts in this state and Defendant regularly attempts to collect debts alleged to be due another.

5. Defendant is engaged in the collection of debts from consumers using the mail and telephone. Defendant regularly attempts to collect consumer debts alleged to be due to another. Defendant is a ''debt collector'' as defined by the FDCPA, 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

6. Defendant placed collection calls to Plaintiff, including one call which was placed to Plaintiff's co-signor after 9 o'clock postmeridian on or around January 26, 2011, which is an inconvenient time, seeking and demanding payment for an alleged consumer debt that is not Plaintiff's; that is allegedly owed under an account number.

7. Upon information and belief, Defendant began placing collection calls to Plaintiff in January of 2011.

8. Upon information and belief, Plaintiff has told Defendant numerous times that the person it is looking for is not her, and Plaintiff has even told Defendant that the last four digits of the social security number that Defendant has alleged is hers is not in actuality hers.

9. Upon information and belief, during collection calls Defendant has indicated and made statements to Plaintiff implying that it did not believe that Plaintiff was being truthful, even though Defendant had no reason to believe that Plaintiff was being untruthful.

10. Upon information and belief, Defendant has hung up on Plaintiff on more than one occasion when Plaintiff has asked both agents Mark O'Connor and Robert Taylor of Defendant to allow Plaintiff to speak to that agent's supervisor; knowing or having reason to know that such action would annoy Plaintiff.

11. During collection calls, Defendant has spoken to Plaintiff in a condescending manner.

12. During a collection call, Plaintiff was lied to by Defendant, who stated, despite Plaintiff having already told them otherwise, that a social security number that Defendant had was Plaintiff's social security number.

13. Defendant utilized unfair and unconscionable means to try to get payments from Plaintiff, by lying to her and continuing to call her in an attempt to collect payments from her on an alleged debt that was not hers.

14. As a result of the acts alleged above, Plaintiff suffered emotional distress resulting in her feeling stressed.

CLAIM FOR RELIEF

15. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.

16. Defendant violated the FDCPA. Defendant's violations include, but are not limited to, the following:

(a) Defendant violated *§1692d(5)* of the FDCPA by causing Plaintiff's telephone to ring continuously with intent to annoy, abuse, or harass, the natural consequence of which was to harass, oppress and/or abuse Plaintiff; and

(b) Defendant violated *§1692e(10)* of the FDCPA by using false, deceptive, or misleading representation or means in connection with the collection of Plaintiff's alleged debt; and

(c) Defendant violated *§1692f* of the FDCPA by using unfair or unconscionable means in connection with the collection of an alleged debt; and

(d) Defendant violated of the FDCPA by communicating with Plaintiff, who is not the consumer who allegedly owes the alleged debt for the purpose of acquiring location information about the consumer more than once without a request to do so by Plaintiff and without the debt collector reasonably believing that the earlier response of Plaintiff was erroneous or incomplete and that Plaintiff now had correct or complete location information; and

(e) Defendant violated *§1692c(a)(1)* by calling Plaintiff in connection with the collection of the alleged debt after 9 o'clock postmeridian, local time at the consumer's location, which is an unusual time or place or a time or place known or which should be known to be inconvenient to Plaintiff, without the prior consent of Plaintiff given directly to Defendant or the express permission of a court of competent jurisdiction.

17. As a result of the foregoing violations of the FDCPA, Defendant is liable to the Plaintiff Janet Miller for declaratory judgment that Defendant's conduct violated the FDCPA, actual damages, statutory damages, and costs and attorney fees.

CLAIM FOR RELIEF

18. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.

19. Defendant violated TDCPA § 392. Defendant's violations of TDCPA § 392 include, but are not limited to the following:

a) Defendant violated TDCPA § 392.302(4) by calling Plaintiff's telephone to ring repeatedly or continuously, and/or making repeated or continuous telephone calls to Plaintiff, with the intent to harass a person at the called number; and

b) Defendant violated TDCPA § 392.304(19) by using any other false representation or deceptive means to collect on the alleged debt or obtain information concerning Plaintiff.

20. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

21. As a result of the above violations of the TDCPA § 392, Defendant is liable to Plaintiff for injunctive and declaratory relief and for actual damages, statutory damages, and attorney fees and costs.

WHEREFORE, Plaintiff JANET MILLER respectfully requests that judgment be entered against COMMONWEALTH FINANCIAL SYSTEMS, INC. d/b/a NCC, INC., for the following:

A. Declaratory judgment that Defendant's conduct violated the FDCPA, and declaratory and injunctive relief for Defendant's violations of TDCPA § 392.

B. Actual damages.

C. Statutory damages pursuant to 15 U.S.C. § 1692k.

D. Statutory damages pursuant to TDCPA § 392.

E. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k and TDCPA § 392.

F. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff JANET MILLER demands trial by jury in this action.

This 10th[h] day of May, 2011.

ALEX SIMANOVSKY & ASSOCIATES, LLC

/s/ Dave Lilley
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